

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Prohibition on Remarriage

Preliminary Report

April 28, 2010

1. Issue

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits regarding the continuation of survivor benefits when the survivor of a member killed in the line of duty remarries. A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits.

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3. Members Impacted

This issue impacts survivors of LEOFF Plan 2 members who are killed in the line of duty. As of June 30, 2007 there were 16,099 active members in LEOFF Plan 2.

Although the number of current survivors of line of duty deaths is not known, the Office of the State Actuary estimated for the 2006 Survivor Health Care there would be approximately three duty-related deaths per year and assumed that there were approximately 24 current survivors as the result of prior duty-related deaths.

4. Current Situation

None of the current Washington state administered retirement plans contain a prohibition on remarriage for a survivor receiving pension benefits. If a survivor remarries, their survivor pension benefits continue. Workers' Compensation benefits provided to a survivor of a line of duty death can cease if the survivor remarries.

5. Background Information and Policy Issues

Unlike retirement benefits, surviving spouses who are receiving Workers' Compensation death benefits cannot continue to receive the benefit after remarriage. The LEOFF Plan 2 Retirement Board has been contacted by survivors of members killed in the line duty regarding this policy.

Retirement Benefits for Survivors

If a member dies in the line of duty and has 10 or more years of service credit or is eligible to retire, the surviving spouse may choose between the following two benefits:

1. Payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit calculated as if the member had elected the Joint and 100% Survivor Option.

If the survivor elects the continuing benefit, the survivor will continue to receive the benefit for their lifetime; the benefit is actuarially reduced to reflect the cost of providing the benefit over the survivor's lifetime.

If a survivor remarries, it has no impact on the survivor's receipt of retirement benefits. Since inception, LEOFF Plan 2 has not contained any provisions with a prohibition on remarriage for survivors. Although LEOFF Plan 1 at one point contained a prohibition on remarriage, that provision was removed from the plan by the Legislature in 1977. In 2002, a provision was added to LEOFF Plan 1 to make the 1977 legislation retroactive, allowing pre-1977 survivors to remarry and continue receiving survivor retirement benefits.

None of the other State administered pension plans have prohibition of remarriage provisions. However, the pre-LEOFF Plan, administered at the local government level, does contain a remarriage prohibition.

Workers' Compensation Benefits for Survivors

If a worker dies from a work-related injury or occupational disease, a surviving spouse receives a monthly benefit from Workers' Compensation. The amount the survivor receives is 60% of the worker's wages at the time of death. There are no actuarial reductions applied to this survivor benefit.

If a worker becomes disabled due to an injury, the worker may be paid a monthly pension for life. The amount the worker receives is based on the formula used for setting time-loss compensation payments. If the disabled worker dies and the death is not related to their disabling work-related injury or occupational disease, a surviving spouse is entitled to benefits if a pension survivor option was selected. The amount the survivor will receive is based on the survivor option chosen, which provides from 50 percent to 100 percent of the *actuarially reduced* monthly pension the disabled worker was receiving.

If the disabled worker dies and the death is related to their disabling work-related injury or occupational disease, the amount the survivor receives is 60% of the worker's wages at the time of disablement. There are no actuarial reductions applied to this survivor benefit.

If a surviving spouse of someone who died from a work-related injury or occupational disease remarries, monthly benefit payments stop. This occurs whether a duty-related death or death following retirement from disability. The survivor will receive benefits through the end of the month in which they remarry. The survivor then has the option to receive a final settlement, or to leave the settlement in trust with Workers' Compensation.

If the survivor accepts the settlement, no further benefits are paid under the claim. If the survivor leaves the settlement in trust and the new marriage ends in death, annulment or divorce, the survivor can apply to reinstate the pension as of the date of death or date the divorce becomes final. Should the survivor die while the settlement is in trust, the survivor's estate is paid 50 percent of the remaining pension reserve or the settlement amount, whichever is less.

If a surviving spouse of someone whose death is not related to their disabling work-related injury or occupational disease remarries, monthly benefit payments do not stop if a survivor option was selected. Similar to survivor retirement benefits, the worker's benefit was actuarially reduced to reflect the cost of continuing the benefit over the survivor's lifetime.

Administrative Issues

The requirement to determine eligibility for continuing benefits has created administrative challenges for the Department of Labor and Industries. In fact, the Department of Labor and Industries received an audit finding from the State Auditor's Office in 2006¹ for paying benefits to survivors who were no longer eligible due to remarriage. Eliminating this requirement may help the Department of Labor and Industries.

Policy Treatment in Other States

Preliminary research by the LEOFF Plan 2 Retirement Board has identified at least four states that do not stop survivor benefits upon remarriage. Those states include: Kansas, Minnesota, Nevada, and North Dakota. In the case of Nevada, the continuation of benefits after remarriage is an exception for surviving spouses of police officers or firefighters.

Legislative History

The Legislature has considered the policy issue of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries during each of the last four Legislative Sessions (HB 1545/2007 & 2008, HB 1212/2009, HB 2519/2010).

2007 - 2008 Legislative Sessions. Legislation first introduced to the 2007 Legislature by Representative Steve Kirby (HB 1545) would have allowed surviving spouses of LEOFF Plan 2 members, who are receiving Workers' Compensation death benefits, to continue to receive the benefit after remarriage.

¹ WA State Auditor's Office, Audit Report 6541, Released May 5, 2006

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$201,662 in the 2007-09 biennium and \$21,536 in each of the 2009-11 and 2011-13 biennia. The Fiscal Note did not identify specific costs attributable to self-insurers.

The 2007 bill did not receive a hearing. During the 2008 session, the bill was passed unanimously by the House of Representatives, but the bill did not move past the Senate Rules Committee.

2009 Legislative Session. New legislation (HB 1212) was introduced in the 2009 session allowing the continuation of workers' compensation benefits after remarriage for surviving spouses of LEOFF Plan 2 members and Washington State Patrol Retirement System members who died in the course of employment or whose death is due to an occupational disease.

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$637,000 in the 2007-09 biennium and \$56,000 in each of the 2009-11 and 2011-13 biennia. The 2007-09 cost *includes* \$223,429 self-insurers will have to pay as their portion of the on-time reserve increase to the Pension Reserve Fund. Self-Insured plans would also incur costs of \$19,000 per future biennium for new claims.

The bill passed the House of Representatives, but was amended in the Senate before being passed. The amendment requires the Workers' Compensation Advisory Committee to study issues relating to allowing a surviving spouse to continue to receive industrial insurance death benefits after remarriage. The amended bill was sent to Conference Committee, but did not proceed any further. The bill was returned to the House of Representatives for consideration during the 2010 session.

Following the 2009 Legislative Session, Representative Steve Conway, Chair of the House Commerce and Labor Committee and Senator Jeanne Kohl-Welles, Chair of the Senate Labor, Commerce, and Consumer Protection Committee, sent a joint letter to Judy Schurke, Director of Labor and Industries requesting a study on the policy of terminating survivors' benefits upon remarriage. The letter requested the following information:

1. The history of and reasons for the policy.
2. The cost of changing the policy and likely impact on rates.
3. Alternatives to offset potential costs.
4. The number of spouses currently receiving monthly benefits.
5. The number of remarriages that have occurred.
6. Assumptions regarding the expected number of new surviving spouses and likelihood of future remarriages.
7. Savings that may result from no longer needing to ensure that remarried spouse stop receiving benefits.
8. Whether other states allow continuation of benefits.
9. Whether other states treat public safety employees different from other employees.

2010 Legislative Session. A comprehensive death benefits bill (HB2519) recommended to the Legislature included a provision which would have eliminated the remarriage prohibition for workers' compensation benefits on surviving spouses of LEOFF and State Patrol members killed in the course of employment. The provision also provided that surviving spouses whose benefits had been suspended due to remarriage would have their benefits resume.

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$1,080,500 in the 2009-11 biennium and \$72,000 in each of the 2011-13 and 2013-15 biennia. The 2009-11 cost *does not* include \$1,089,858 self-insurers will have to pay as their portion of the one-time reserve increase to the Pension Reserve Fund. Self-Insured plans would also incur costs of \$44,800 per future biennium for new claims.

The House of Representatives overwhelmingly passed the legislation. However, in the Senate an amendment removed the remarriage prohibition provision and increased the lump-sum cash out option from 24 months of salary to 36 months of salary. The Senate passed the bill as amended. The House of Representatives concurred and passed the amended bill.

Appendix A: States Allowing Continuation of Benefits After Survivor Remarriage

<p>Kansas</p>	<p><u>44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.</u></p> <p>(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.</p> <p>(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.</p> <p>(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.</p> <p>(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent except the marriage of the surviving legal spouse shall not terminate benefits to such spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.</p>
<p>Minnesota</p> <p>Per MN worker's comp staff, benefits do not cease or suspend due to remarriage after 10/1/83, per Ott v. Krans</p>	<p><u>176.111 Dependents, allowances.</u></p> <p>Subdivision 1. Persons wholly dependent, presumption. For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent: (a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;</p> <p>Subd. 6. Spouse, no dependent child. If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.</p> <p>Subd. 9a. Remarriage of spouse. A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.</p> <p>-----</p> <p><i>Winter, deceased by Winter Ott v. D.J. Kranz, 3/31/04*</i> DOD: 11/24/97</p> <p style="padding-left: 40px;">Dependency Benefits – Remarriage of Spouse Minnesota Statutes §176.111, subd. 8 Minnesota Statutes §176.111, subd. 9a Minnesota Statutes §176.111, subd. 16</p> <p>The purpose of Minnesota Statutes §176.111 is to provide wage replacement benefits to a surviving spouse and dependent children. We cannot conclude the phrase “continue to be eligible to receive” requires that benefits to the surviving spouse be suspended upon remarriage. Rather, the dependency statute, as amended effective Jan. 1, 1984, continues to provide for the continuation of benefits to a surviving spouse upon remarriage. Affirmed.</p>

Nevada	<p><u>NRS 616C.505 Amount and duration of compensation.</u> If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:</p> <p>2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.</p> <p><u>NRS 616C.507 Duration of compensation for surviving spouse of police officer or firefighter.</u></p> <p>1. Except as otherwise provided in this section, if the surviving spouse of a deceased police officer or firefighter who died while actively employed as a police officer or firefighter is entitled to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487, the surviving spouse:</p> <p>(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and</p> <p>(b) Must not be paid any compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 in one lump sum upon remarriage.</p> <p>(Added to NRS by 2007, 678)</p>
North Dakota	<p><u>65-05-21. Marriage settlement to spouse.</u></p> <p>If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.</p>